IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1365 OF 2005

Ramchandra Vasudeo Abhyankar ...Petitioner

Versus

M/s. Sapre & Associates & Ors. ...Respondents

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Mr. N.V. Vehcalekar, Advocate for Petitioner
Mr. C.K. Pendse, Advocate for Respondent No.1.
Mr. Y.S. Shinde, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.
DATED: 29TH JUNE, 2005

P. C.:-

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner has prayed for quashing of process issued against him in Criminal Case No. 2075 of 1999 which is pending in the Court of learned J.M.F.C. Court No.4 at Pune. In the said case, process has been issued against the petitioner under Section 138 of Negotiable Instruments Act.

3. The petitioner had preferred an application before the learned Magistrate for recalling of process. The said application came to be rejected on the basis of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and ohters 2004 (4) Mh.L.J. 275**. Being aggrieved thereby, the

petitioner preferred revision before the Sessions Court against the order of the Magistrate rejecting his application for recalling of process. The said revision came to be dismissed as the learned Sessions Judge was of the opinion that in view of the decision of the Supreme Court in the case of Adalat Prasad (supra) the Magistrate cannot recall the process issued by him. Hence, the learned Sessions Judge observed that no fault can be found with the order of the Magistrate. On this ground alone the revision came to be dismissed. In view of the decision of the Supreme Court in the case of Adalat Prasad, no fault can be found with the order of the Magistrate in rejecting the application for recalling of process. So also no fault can be found with the observations in the order of the Sessions Judge that the view taken by the Magistrate is a correct view.

4. However, For the reasons recorded in my order dated 13th June, 2005 passed in Criminal Writ Petition No.213 of 2005 and order dated 21st June, 2005 passed in Criminal Application No.550 of 2005, the petitioner has an efficacious remedy of preferring a revision in respect of order of Magistrate issuing process before the Sessions Court. In his revision the petitioner has prayed for discharge or dismissal of complaint. This aspect has not been taken into consideration by the learned

Sessions Judge and the learned Sessions Judge has only considered the aspect as to whether the order of the learned Magistrate rejecting the application for recall is correct or not.

5. Hence, the learned Sessions Judge is directed to reconsider Revision application No.744 of 2004. The said revision shall be considered in the light of the prayer of the petitioner seeking to set aside the order of the Magistrate of issuance of process against the petitioner and not in respect of the order of the Magistrate rejecting the application for recalling of process preferred by the petitioner.

6. The proceedings before the trial Court are stayed for a period of three weeks from today.

7. The learned advocate for the petitioner states that he will give four days notice in advance to the respondent i.e. original complainant in respect of moving before the Sessions Court.

8. The learned Sessions Judge shall dispose of the revision No. 744 of 2004 on merits after hearing necessary parties.

9. Writ petition is disposed of.

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